

outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulations (§998.200): *Provided*, That each lot of peanuts so disposed of is treated with a coloring or dyeing solution approved and prescribed by the Committee; handled and shipped under positive lot identification procedures, (except for bulk loads, red tags shall be used and marked, "For Animal Feed-Not for Human Consumption"); assayed for aflatoxin and covered by a valid "negative" aflatoxin certificate; and inspected by the Federal or Federal-State Inspection Service and a certification made as to moisture, foreign material content, and that a minimum of 80 percent of the peanuts must show evidence of the dye or coloring agent, which is the Committee's requirement specified for dyeing or coloring. Each lot of inedible quality peanuts disposed of for use as domestic animal feed shall be reported to the Committee by the handler as prescribed by the Committee on a form provided by the Committee, and the handler's bill of lading and this invoice covering the shipment of each such lot shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption."

[53 FR 20291, June 3, 1988, as amended at 54 FR 25441, June 15, 1989; 54 FR 27271, June 28, 1989; 55 FR 30902, July 30, 1990; 55 FR 34512, Aug. 23, 1990; 56 FR 37647, Aug. 8, 1991; 57 FR 34063, Aug. 3, 1992; 58 FR 34867, June 30, 1993; 60 FR 36208, July 14, 1995]

**§998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.**

(a) For the purpose of paying indemnities on a uniform basis pursuant to §998.36 of the peanut marketing agreement, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled into one of the categories listed in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200) or paragraph (j) of this section, on which the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the

results of further chemical assay, after shipment.

(b) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements for Indemnifiable Grades as specified in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200), shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the *Outgoing quality regulation* (7 CFR 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on further assays, that the lot is so high in aflatoxin that it should be handled pursuant to this section, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification.

(c) The indemnification payment shall be transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the *Outgoing quality regulation* (7 CFR 998.200).

(d) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay such claims as it determines to be valid, to the extent of the equivalent indemnification value applicable to the peanuts used in the product so withheld. On products manufactured from edible quality grades of peanuts, such claims may be filed with the Committee no later than November 1 of the second year following the year in which the peanuts were produced.

(e) Notice of claims for indemnification on peanuts of the current crop

year shall be received by the Committee (by mail or legible facsimile) no later than the close of the business day on November 1, following the end of the crop year. For the purpose of this paragraph, “notice” shall be defined as the covering (executed and signed) Form PAC-5, accompanied by a copy of the applicable valid grade inspection certificate and the lab certificate showing the aflatoxin assay results which caused the request for rejection.

(f) Each handler shall include, directly or by reference, in the handler’s sales contract, the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an “appeal” inspection for aflatoxin. Results of the “appeal” inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the “appeal” sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the “appeal” sample test results, otherwise the buyer agrees that he/she forfeits the right to reject the lot and return it to the seller.

(2) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the

buyer’s to send one copy of the results of the assay to the buyer. A portion of the costs of aflatoxin sampling and testing, as provided in § 998.200(c)(3), shall be for the account of the buyer and the buyer agrees to pay such costs.

(g) Any handler who fails to include such provisions in his/her sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(h)(1) Any handler who fails to conform to the requirements of paragraph (g) of the *Incoming quality regulation* (7 CFR 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(2) Any handler who fails to comply with the requirements of paragraph (h)(1) or (h)(2) of the *Outgoing quality regulation* (7 CFR 998.200) shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(i) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the *Outgoing quality regulation* (7 CFR 998.200), shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(j) Categories of cleaned inshell peanuts eligible for indemnification are as follows:

(1) Cleaned inshell peanuts <sup>1</sup>

(i) U.S. Jumbos

(ii) U.S. Fancy Handpicks

(iii) Valencia-Roasting Stock <sup>2</sup>

(2) *Reserved.*

<sup>1</sup>Eligible lots of cleaned inshell peanuts which are found, after shipment, to contain excessive aflatoxin, may be rejected to the handler. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler’s plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be the extent of the indemnification payment.

<sup>2</sup>Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

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(k) The indemnification value for peanuts indemnified shall be 35 cents per pound.

[61 FR 55549, Oct. 28, 1996]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in the Finding Aids section of this volume.

### ASSESSMENT RATES

#### § 998.409 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of \$0.70 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d) is established for handlers signatory to the agreement. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

[61 FR 35595, July 8, 1996]

## PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

Sec.

999.1 Regulation governing the importation of dates.

999.100 Regulation governing imports of walnuts.

999.200 Regulation governing the importation of prunes.

999.300 Regulation governing importation of raisins.

999.400 Regulation governing the importation of filberts.

999.500 Safeguard procedures for walnuts and certain dates exempt from grade, size, quality, and maturity requirements.

999.600 Regulation governing imports of peanuts.

AUTHORITY: 7 U.S.C. 601-674; and 7 U.S.C. 1445c-3.

#### § 999.1 Regulation governing the importation of dates.

(a) *Definitions.* (1) *Dates in retail packages* means whole or pitted dates, other than dates prepared or preserved, wrapped or packaged for sale at retail.

(2) *Dates for packaging* means whole or pitted dates in bulk containers

which are to be repacked, in whole or part, in the United States as dates in retail packages.

(3) *Bulk container* means any container of dates which, together with the dates therein, weighs more than ten pounds.

(4) *Dates for processing* means any dates for use in a bakery, confectionery, or other product and includes dates coated with a substance materially altering their color.

(5) *Dates prepared or preserved* means dates processed into a confection or other product, dates coated with a substance materially altering their color, or dates prepared for incorporation into a product by chopping, slicing, or other processing which materially alters their form.

(6) *Person* means any individual, partnership, corporation, association, or other business unit.

(7) *Fruit and Vegetable Division* means the Fruit and Vegetable Division of the Consumer and Marketing Service, United States Department of Agriculture, Washington, DC 20250.

(8) *USDA inspector* means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division or any other duly authorized employee of the USDA.

(9) *Inspection certificate* means a written statement or memorandum report issued by a USDA inspector setting forth in addition to appropriate descriptive information the quality and condition of the product inspected, and in the case of imported dates, a statement of meeting or failing, as applicable, the U.S. import requirements under section 8e of the AMA Act of 1937.

(10) *Importation* means release from custody of United States Bureau of Customs.

(b) *Grade requirements.* (1) Except as provided in paragraph (d) of this section, the importation into the United States of any lot of dates for packaging or dates in retail packages is prohibited unless the dates are wholesome and unadulterated and meet the following grade requirements which are determined to be comparable to those imposed upon domestic dates handled pursuant to Order No. 987, as amended